

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
 :
 -against- : No. 86 Cr. 1124 (JFK)
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 ENRIQUE RIVERA [Eulogio Portes], : ORDER
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 Defendant. :
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JOHN F. KEENAN, United States District Judge:

On September 16, 2019, Defendant Enrique Rivera a/k/a Eulogio Portes ("Portes") was arrested in the District of Massachusetts on a bench warrant that the Court issued in May 1987 after Portes failed to appear at sentencing for his role in a conspiracy to possess and distribute cocaine, in violation of 21 U.S.C. § 841. On February 4, 2020, the Court sentenced Portes to a term of imprisonment of one year and one day with credit for the time he had already served after his September 2019 arrest. To date, Portes has served approximately seven months of that 12 month and one day sentence.

At sentencing, the Court noted that Portes suffers from multiple physical ailments, and it recommended that he serve the remainder of his sentence at Fort Devens, Massachusetts.

(Judgment (Feb. 4, 2020), ECF No. 58.) Portes, however, was not transferred to the Federal Medical Center, Devens. Instead, he remains at the Metropolitan Detention Center, Brooklyn ("the MDC") where, as of April 14, 2020, four inmates and 13 staff

have tested positive for the Coronavirus, COVID-19 ("COVID-19").
See COVID-19 Cases, Federal Bureau of Prisons,
<https://www.bop.gov/coronavirus/> (last visited Apr. 14, 2020).
The MDC has placed Portes on its list of "high-risk" inmates who
are especially vulnerable to contracting the disease.

On April 3, 2020 Portes (through his counsel) filed a
motion ("the Motion") for a reduction in sentence to time served
or home confinement on the grounds that the public health
emergency caused by COVID-19 presents extraordinary and
compelling reasons to warrant his immediate compassionate
release pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). (Mot. for
Reduction in Sentence or Home Confinement (Apr. 3, 2020), ECF
No. 66.) The Government opposes the Motion on procedural and
substantive grounds. (Letter from Thomas John Wright, Assistant
United States Attorney, to Hon. John F. Keenan (Apr. 9, 2020),
ECF No. 68.) The Motion was heard during a telephonic
conference on April 13, 2020.

The Court is dismayed to learn that Portes was not
transferred to Fort Devens as recommended. Accordingly, before
ruling on the Motion, and cognizant of the fact that the Court
cannot dictate to the Bureau of Prisons ("the BOP") how the
Executive Branch carries out a defendant's sentence, see, e.g.,
United States v. Kanagbou, 726 F. App'x 21, 25 n.1 (2d Cir.
2018) (summary order), the Court urges the BOP to forthwith

transfer Portes to Fort Devens where, according to the BOP's website, there are no confirmed cases of COVID-19. See COVID-19 Cases, Federal Bureau of Prisons, <https://www.bop.gov/coronavirus/> (last visited Apr. 14, 2020). The Court also urges the BOP to expedite its consideration of Portes's petition for compassionate release, which his counsel represent they submitted to the Warden of the MDC on or about April 8, 2020.

If the BOP elects not to immediately transfer Portes to Fort Devens, the Court hereby ORDERS it to inform the Court of where and how Portes will serve his remaining five months in the BOP's custody. Such information must be provided to the Court and the parties by no later than 12:00 p.m. on Wednesday, April 22, 2020.

In the meantime, the Court recommends that Portes's counsel confer with the U.S. Probation Department for the Southern District of New York to ensure that their proposed location for a possible term of home confinement in Massachusetts is acceptable.

Finally, upon receipt of this Order, the Government is directed to provide a copy to the BOP without delay.

SO ORDERED.

Dated: New York, New York
April 14, 2020

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John F. Keenan
United States District Judge